

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WENDELL R. MOORE d/b/a MOORE
DESIGN GROUP

Plaintiff,

V.

MULTIMEDIA KSDK, INC.,

Defendant.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW plaintiff Wendell R. Moore and, for his Complaint against the defendant Multimedia KSDK, Inc., states as follows:

PARTIES

1. Plaintiff Wendell R. Moore, a/k/a Bob Moore (“Moore”) owns and operates Moore Design Group, a provider of corporate graphic design, photography, and internet web design services, and a publisher of various online publications and directories. Moore Design Group is located in St. Louis, Missouri.

2. Moore is the publisher and editor of Saint Louis Front Page, a for-profit online publication. Saint Louis Front Page is an internet-only publication that focuses on the dissemination of St. Louis news and information using a visually dynamic format.

3. Saint Louis Front Page is located on the internet at the domain names “www.stlouisfrontpage.com” and “www.slfp.com.”

4. Defendant Multimedia KSDK, Inc. (“KSDK”) is a South Carolina corporation with a principal place of business at 1000 Market Street, St. Louis, Missouri 63101.

5. KSDK operates a network television station in St. Louis, Missouri, broadcasts local news programs, and runs an online news website at “www.ksdk.com.” According to KSDK’s website, KSDK is “a division of Gannett Satellite Information Network, Inc.”

JURISDICTION AND VENUE

6. This lawsuit is a civil action for willful copyright infringement and arises under the copyright laws of the United States (Title 17, United States Code).

7. This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and/or 1400(a).

FACTS

9. Moore creates for placement on Saint Louis Front Page numerous photographic images relating to the publication’s news articles and stories. Moore’s photographic images that appear on Saint Louis Front Page are copyrightable works.

10. Moore, as the author of the photographic works that appear on Saint Louis Front Page, is the exclusive owner of the copyrights for such works.

11. As more fully described herein, KSDK unlawfully copied one such photographic work and displayed that photograph on two separate KSDK news broadcasts without permission.

The Copyrightable Photographic Work Owned by Moore

12. On or about September 20, 2013, Moore visited the 2013 Forest Park Balloon Glow for the purpose of taking photographs for a news article for the Saint Louis Front Page. The Forest Park Balloon Glow is a large hot air balloon festival located in St. Louis, Missouri.

This event attracts many St. Louis area media outlets, including, on information and belief, representatives of KSDK.

13. Moore prepared a Saint Louis Front Page news article about the Forest Park Balloon Glow, which included several photographs that Moore took while at the event. The article first appeared on the Saint Louis Front Page website on or about September 20, 2013. A copy of the Saint Louis Front Page news article is attached hereto as Exhibit A.

14. Among the photographic images that appeared with Moore's news article was a photograph of several hot air balloons with the Energizer Bunny in the center ("Balloon Glow Photo"). The Balloon Glow Photo was prominently displayed at the top of the Saint Louis Front Page news article attached as Exhibit A. A copy of the Balloon Glow Photo is attached hereto as Exhibit B.

15. Moore displayed a copyright notice on each photographic image that appeared with the news article, including on the Balloon Glow Photo. The copyright notice that appeared on the Balloon Glow Photo stated as follows: "© 2013 bob Moore/slfp.com."

16. At the end of the news article on the Saint Louis Front Page website, Moore displayed the following statement: "The Saint Louis Front Page is owned and maintained by the Moore Design Group for the sole purpose of disseminating news and information about the Metropolitan Saint Louis area. Text or graphics may not be copied, rewritten or distributed in any manner whatsoever without written permission. For more information, contact editor@slfp.com. All rights reserved world wide © 1996-2013 Moore Design Group." Exhibit A.

17. The statement quoted in the previous paragraph, or a very similar statement, appears on most, if not all, of the pages of the Saint Louis Front Page website.

18. Moore is the exclusive owner of all copyright rights for the Balloon Glow Photo, including the exclusive right under the Copyright Act to reproduce, distribute, and modify, and to authorize the reproduction, distribution, and modification of the Balloon Glow Photo.

19. Moore has never authorized any other person or entity to reproduce, distribute, or modify the Balloon Glow Photo.

20. Moore has registered his copyright in the Balloon Glow Photo with the United States Copyright Office under registration number VA 1-433-899, with an effective date of January 7, 2014. A copy of the Copyright Registration certificate for the Balloon Glow Photo is attached hereto as Exhibit C.

KSDK's Unauthorized Copying of the Balloon Glow Photo

21. Upon information and belief, KSDK, acting through one or more of its employees or agents, electronically copied the Balloon Glow Photo and used the Balloon Glow Photo to prepare a backdrop graphic for a KSDK weather report that addressed the 2014 "Great Forest Park Balloon Race." This weather report was broadcast on September 18, 2014, at 5:00 pm and 10:00 pm. The copyright notice stating "© 2013 bob Moore/slfp.com" is clearly displayed in the bottom right corner of the Balloon Glow Photo used by KSDK. Attached hereto as Exhibit D is a still image of a portion of the video broadcast showing KSDK's use of the Balloon Glow Photo on September 18, 2014.

22. On September 18, 2009, Moore and KSDK entered into a settlement agreement ("the Agreement") to settle a dispute regarding KSDK's alleged unauthorized use of one of Moore's copyrighted photographs. A copy of the Agreement is attached hereto as Exhibit E. As part of the Agreement, KSDK agreed to "not use . . . any other [Moore Design Group] photos as

indicated by the ‘bob Moore / SLFP.com’ copyright notice appearing thereon, in any manner without obtaining prior consent from [Moore Design Group].”

23. Moore did not speak with KSDK or KSDK’s employees or agents regarding the Balloon Glow Photo, nor did Moore give permission to KSDK or KSDK’s employees or agents to use the Balloon Glow Photo.

24. Upon information and belief, KSDK has infringed Moore’s copyrighted photographs in the past, as well as the Balloon Glow Photo. KSDK may have infringed additional Moore copyrighted photographs as well.

25. Because of the history between the parties here, KSDK is fully aware of Moore, Saint Louis Front Page, and Moore’s copyrighted photographs appearing on www.slfp.com. The blatant copying by KSDK of the Balloon Glow Photo after the Agreement not to make such copies underscores the willful nature of the infringement here.

COUNT I: COPYRIGHT INFRINGEMENT OF THE BALLOON GLOW PHOTO

26. Moore incorporates by reference the allegations of paragraphs 1 through 25 above.

27. KSDK’s use of Moore’s Balloon Glow Photo without Moore’s permission constitutes infringement of the Balloon Glow Photo’s copyright under Title 17 of the United States Code.

28. KSDK’s acts of infringement were done deliberately, willfully, and in knowing and flagrant violation of Moore’s copyright rights and the Agreement between Moore and KSDK.

29. Moore has sustained substantial injuries, loss, and damage as a result of KSDK’s infringement of the Balloon Glow Photo.

COUNT II: BREACH OF CONTRACT

30. Moore incorporates by reference the allegations of paragraphs 1 through 25 above.

31. Moore and KSDK entered into a binding contract on September 18, 2009, in which KSDK agreed not to use any of Moore photos containing the “bob Moore / SLFP.com” copyright notice.

32. KSDK’s use of the Balloon Glow Photo, which included the “bob Moore / SLFP.com” copyright notice, breached an express term of the Agreement.

33. Moore has sustained substantial injuries, loss, and damages as a result of KSDK’s breach of the Agreement.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Moore prays for judgment as follows:

1. That judgment be entered in favor of plaintiff Moore on Counts I and II;
2. That defendant KSDK, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them and any others who receive actual notice of the order by personal service or otherwise, be permanently enjoined from doing or authorizing directly or indirectly, any of the following activities:
 - a. duplicating, distributing, selling, renting, exchanging, trading, or lending any unauthorized copies of Moore’s copyrighted works, including but not limited to Moore’s Balloon Glow Photo;
 - b. offering to do any of the acts enjoined in subparagraph (a) above; and
 - c. infringing or contributing to or participating in the infringement by others of any of the copyrights in Moore’s copyrighted works, and from acting in

concert with, or aiding or abetting others to infringe any of Moore's copyrights in any way, including but not limited to the copyrights in Moore's Balloon Glow Photo.

3. That this Court enter an Order declaring defendant KSDK's acts of infringement to have been willful;

4. That judgment be entered in plaintiff Moore's favor and against defendant KSDK in the amount of either (i) the actual damages suffered by Moore as a result of KSDK's infringement of Moore's copyright, plus any profits of KSDK that are not taken into account in computing actual damages, or (ii) statutory damages in the total amount of \$150,000 for Count I of this Complaint, or such amount as may be determined by jury verdict up to the statutory maximum amount per violation in effect at the time of judgment;

5. That judgment be entered in plaintiff Moore's favor and against defendant KSDK in the amount of actual damages suffered by Moore as a result of KSDK's breach of the Agreement.

6. That defendant KSDK be ordered to pay to plaintiff Moore the total amount of attorney fees and costs incurred by Moore in connection with this lawsuit;

7. That plaintiff Moore be awarded prejudgment interest; and

8. That plaintiff Moore be granted such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Moore requests a trial by jury in this matter.

Dated: January 27, 2015

Respectfully submitted,

SENNIGER POWERS LLP

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